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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,843	01/21/2004	Cedora Ruiz	RUIZ.0001P	5864
7590	11/23/2005		EXAMINER	
Cedora Ruiz 131 Dahlia Street Casper, WY 82064			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 11/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/762,843	<b>Applicant(s)</b> RUIZ, CEDORA	
	<b>Examiner</b> David J. Walczak	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 15 is objected to because of the following informalities: On line 1 of claim 15, "ornaments" should be --elements—and on line 2 of this claim, "no" should be --not--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 12, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Siegel (as cited by Applicant). In regard to claims 10 and 12, Siegel discloses a writing pen comprised of a cylindrical, transparent housing 23 having a closed interior, a tip for dispensing ink stored in a well 13 and a plurality of solid "ornamental elements" 20, 22, 11, 14 substantially filling the interior between the well and the housing such that the well is generally obscured. In regard to claims 13 and 14, viewing Figure 1, there are three ornamental elements 20, 11, 14 layered in the space between the well and the housing.

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Claims 10, 12 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dirks (as cited by Applicant). In regard to claims 10 and 12, Dirks discloses a writing implement having a transparent, cylindrical housing 30, a tip for dispensing ink from an inkwell 15 and ornamental elements 40 between the well and the housing which obscure the well. In regard to claims 15 and 16, the ornamental elements 40 are contained within the housing, but not connected to the housing, such that they may move relative to each other (see column 2, lines 37-44). In regard to claim 17, the tip 11 extends from and closes a first end of the housing 30 such that the ornamental elements are located between the tip and the second end 12 of the housing. In regard to claim 18, the housing 30 comprises a single wall which defines the interior space (having elements 24, 40, 15 therein).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dirks.

The ornamental elements in the Dirks device comprise balls 40. Although the Dirks reference does not disclose the diameter of the balls, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was

made that the balls can be of any suitable diameter, depending on the overall size of the writing implement, without effecting the overall operation of the device.

### ***Response to Arguments***

Applicant's arguments filed 7/7/05 have been fully considered but they are not persuasive. The Applicant contends that the Siegel reference is not applicable against the claims in that the ornamental elements are located exterior of the barrel (housing) 11 and the claim requires ornamental elements and an ink well located within the housing. As discussed above, however, the Examiner is not relying on element 11 of Siegel to teach the "housing" but is relying on element 23 to disclose the claimed housing. As clearly shown in Figure 2, ornamental elements 20 and 22 and ink well 13 (wherein the ornamental elements are positioned around the well) are positioned within the interior of housing 23.

The Applicant further contends that the Dirks reference is not applicable against the claims in that the ornamental elements are not located between the well and the housing 30, as claimed, but are located between the housing and member 24. Viewing Figure 4, however, the ornamental elements (the balls) are located between the housing 30 and the well 15. The fact that element 24 is also located between the well and the housing does not mean that the ornamental elements are not also located between the housing and well, i.e. both the ornamental elements and element 24 are located between the housing and the well. The Applicant further contends that the Dirks reference is not applicable against the claims in that the ornamental elements do not

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"substantially" fill the interior of the housing. In as much as the Applicant has defined the limitation "substantially filling", the balls in the Dirks device are also considered to "substantially" fill the interior.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
11/18/05